In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-417

CHARLES BRADLEY GRIFFITH, PETITIONER

v.

RICHARD M. NIXON, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

Petitioner filed a complaint *pro se* in the United States District Court for the District of Vermont against Richard M. Nixon, individually and as President of the United States, the Committee to Reelect the President, and the Finance Committee to Reelect the President. Petitioner sought a declaratory judgment setting aside the 1972 Presidential election, an order requiring the holding of new elections on November 5, 1974, and compensatory and punitive damages aggregating $22,050.000.[1] In support of his requests for relief petitioner alleged that

[1]Petitioner also sought the certification of a class, assertedly made up of "50,000,000 members, consisting of all U.S. citizens who were registered to vote in the 1972 Presidential election" (Pet. App. 22-b).

the defendants had interfered with the nominating process of the Democratic Party and had conspired to deprive him and others similarly situated of their lawful right to vote for a qualified presidential and vice-presidential candidate, in violation of 42 U.S.C. 1985(3). Service on the defendants was attempted by delivering copies of the summons and complaint to the United States Attorney for Vermont and by mailing additional copies by certified mail to the defendants in Washington, D.C. (Pet. App. 22-a to 22-b).

The United States Attorney appeared as *amicus curiae* in the district court to urge that the President of the United States is not subject to suit. The district court, relying on *Baker* v. *Carr*, 369 U.S. 186, found that the validity of the 1972 presidential election was a non-justiciable political question. The district court further held that petitioner had failed to obtain personal jurisdiction over the defendants and that, so far as the claim for money damages was concerned, venue did not properly lie in Vermont (Pet. App. 22-b to 22-e). The court of appeals affirmed *per curiam* (518 F.2d 1195; Pet App. 22-a to 22-b).

The equitable relief sought by petitioner would require the removal from office of the incumbent President. The courts below correctly decided that the removal from office of a sitting President is a matter textually committed to the legislative branch under Article II, Section 4, of the Constitution and is therefore not justiciable. See, *e.g. Powell* v. *McCormack*, 395 U.S. 486, 518-519; *Baker* v. *Carr, supra*, 369 U.S. at 217. The petition for a writ of certiorari should be denied insofar as it seeks review of that question.

We take no position with respect to those claims for relief directed against the defendants in their individual capacities.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

NOVEMBER 1975.